

PTO Form (Rev 4/2000)

OMB No. 0651-.... (Exp. 08/31/2004)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77813409
LAW OFFICE ASSIGNED	LAW OFFICE 104
MARK SECTION (no change)	
ARGUMENT(S)	
<p>Applicant hereby responds to the Final Office Action mailed July 2, 2010, in which the Examiner refused to register the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark (Application Serial No. 77/813,409).</p> <p>In the Office Action, the Examiner refused to register the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark on the ground that, pursuant to Section 2(d) of the Trademark Act, the applied-for mark so resembles various registered marks (<i>see</i> Final Office Action, identifying the "cited marks") such that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the Applicant and the registrants.</p> <p>For the reasons set forth below, Applicant respectfully requests that the refusal pursuant to Sections 2(d) be withdrawn.</p> <p>I. <u>SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION</u></p> <p>The ultimate question for determining the issue of likelihood of confusion is "whether the marks will confuse [relevant consumers] into believing that the goods [or services] they identify come from the same source." <i>See</i> Final Office Action, p. 5 (<i>citing In re West Point-Pepperell, Inc.</i>, 468 F.2d 200, 175 U.S.P.Q. 558 (C.C.P.A., 1972)). The test to determine whether there is a likelihood of confusion is set forth in <i>In re E.I. DuPont de Nemours & Co.</i>, 476, F.2d 1367 (C.C.P.A. 1973). Out of the several factors in the so-called <i>DuPont</i> test, (1) the similarity of the marks, (2) the similarity of the goods and/or services and (3) the similarity of trade channels of the goods and/or services are the most important factors to consider. <i>See In re Opus One, Inc.</i>, 60 U.S.P.Q.2d 1812 (T.T.A.B. 2001); T.M.E.P. §§ 1207.01 <i>et seq.</i> Here, the cited marks are distinguishable, the services only tangentially related and the purchasers are sophisticated. In addition, the "prescription solutions" portion of Applicant's mark in common with the cited PRESCRIPTION SOLUTIONS marks should be afforded</p>	

less weight in the *DuPont* analysis because it has been diluted through pervasive use in the healthcare industry. Applicant addresses these points in greater detail below.

A. THE INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN MARK IS SIGNIFICANTLY DIFFERENT FROM THE CITED MARKS AS TO SIGHT, SOUND AND CONNOTATION.

The Examiner is correct that for determining the likelihood of confusion, “the focus is on the recollection of the purchaser who normally retains a general rather than specific impression of trademarks.” See Final Office Action, p. 5 citing *Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 U.S.P.Q. 537 (T.T.A.B. 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 U.S.P.Q. 196 (T.T.A.B. 1975); T.M.E.P. § 1207.01(b). However, “[t]he commercial impression of a trade-mark is derived from it as a whole, not from its elements separated and considered in detail.” *Estate of P. D. Beckwith, Inc. v. Commissioner of Patents*, 252 U.S. 538, 545-46 (U.S. 1920) (emphasis added); see also *AutoZone, Inc. v. Tandy Corp.*, 373 F.3d 786, 795 (6th Cir. Tenn. 2004) (“Conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up into their component parts for comparison The rationale for the rule is that the commercial impression of a composite trademark on an ordinary prospective buyer is created by the mark as a whole, not by its component parts.” (quoting 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 23:41, at 23-123 (2003) (emphasis added))). Accordingly, it is improper to focus on the terms “prescription” and “solutions” or the phrase “prescription solutions” while diminishing the other elements present in the mark, i.e., the term “integrated” or the prominent design portion of the mark. See *In Re The Hearst Corporation*, 982 F.2d 493, 494 (Fed. Cir. 1992) (finding VARGA GIRL for calendars was inappropriately refused registration for calendars due to VARGA for calendars, the court stated, “by stressing the portion “varga” and diminishing the portion “girl”, the Board inappropriately changed the mark.”).

Despite this well-settled authority, the Examiner appears to have determined likelihood of confusion by parsing out the phrase “prescription solutions,” and considering that phrase separately from the first term of the mark, “integrated.” When considered in its entirety, however, the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark differs significantly from the cited marks. A relevant consumer would immediately notice that the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark appears longer than and sounds different from any of the cited marks and includes the term “integrated” that is not found in any of the cited marks. The term “integrated” is one-third of Applicant’s mark and contains the first four syllables in the ten-syllable mark. As the term “integrated” is the first and most important part of Applicant’s mark in both sight and sound, relevant consumers would weigh the term “integrated” much more heavily than the terms “prescription” and “solutions” or the phrase “prescription solutions.”

In addition, the design portion of Applicant’s mark further distinguishes it from the cited

marks. As part of the likelihood of confusion analysis, “it is essential to consider the marks’ visual characteristics.” *Barbecue Marx, Inc. v. 551 Ogden, Inc.*, 235 F.3d 1041, 1044 (7th Cir. Ill. 2000) (Where the marks BONE DADDY and SMOKE DADDY were found to be similar in sound; however, the logo accompanying each mark was distinctively different. Thus, “[t]he visual appearance significantly undercuts the ... argument that the marks are similar in appearance and suggestion.”); *CareFirst of Md., Inc. v. First Care, P.C.*, 434 F.3d 263, 271 (4th Cir. Va. 2006) (“If one of two similar marks is commonly paired with other material, that pairing will serve to lessen any confusion that might otherwise be caused by the textual similarity between the two marks.”). Here, design portion of Applicant’s mark consists of two large interlocking shapes similar to a D or O that are approximately the same size as the entire word portion of the mark. See Attachment B. Further, the design portion is to the left of the word portion and, thus, the first portion of the mark that an ordinary consumer would notice. In fact, in the Final Office Action, none of the cited marks even include a logo element. See Final Office Action. Thus, the visual characteristics of Applicant’s mark, i.e., the prominent design element, further distinguish it from the cited marks.

In addition, the Examiner appears to have downplayed the significantly different connotation elicited by the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark. The connotation of Applicant’s mark differs significantly by virtue of the fact that it includes the term “integrated,” whereas none of the cited marks include a term even remotely close to that term. Moreover, it is appropriate to give greater weight to the important or “dominant” parts of a composite mark. See *Kangol Ltd. V. KangaROOS U.S.A., Inc.*, 974 F.2d 161, 163 (Fed. Cir. 1992) (where two designs KANGOL and KANGAROOS, each featuring a kangaroo design under the KANG portion of the mark were found to be similar because the kangaroo was the dominant portion of the mark). Here, relevant consumers would see and hear the dominant term “integrated” first. In addition, since the phrase “prescription solutions” is used pervasively throughout the healthcare industry, as evidenced by the Examiner’s cited references, the term “integrated” would, to a large extent, stick out as the most important part of the mark. Further, as an adjective, the term “integrated” modifies the nouns “prescription” and “solutions,” which to the relevant consumer would also be an important consideration to determine the connotation of the whole mark. As such, more weight should be given to the term “integrated” (as well as the design element of the mark) to determine the connotation elicited by Applicant’s INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark. *CareFirst of Md.*, 434 F.3d at 271 (“If one of two similar marks is commonly paired with other material, that pairing will serve to lessen any confusion that might otherwise be caused by the textual similarity between the two marks. . . . This effect is most significant when . . . the allegedly infringed mark . . . has little independent strength.”); *Autozone, Inc. v. Tandy Corp.*, 373 F.3d 786, 797 (6th Cir. 2004); *Lang v. Retirement Living Pub. Co., Inc.*, 949 F.2d 576, 581-82 (2d Cir. 1991). Therefore, because none of the cited marks include the term “integrated,” the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark also differs significantly as to connotation.

Accordingly, when considered in its entirety, relevant consumers would perceive the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark differently than any of the cited marks as to sight, sound and connotation, including the PRESCRIPTION SOLUTIONS mark; thus it is not likely to confuse relevant consumers as to the source of the goods and/or services.

**B. THE GOODS AND SERVICES SOLD IN CONNECTION WITH THE
INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN MARK ARE
DIFFERENT FROM THOSE SOLD UNDER THE CITED MARKS.**

The degree to which two services are similar is determined by looking at the degree to which the services compete with each other. *See Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1527, 224 U.S.P.Q. 185 (4th Cir. 1984) (“the similarity of the goods/services the marks identify”); *Westchester Media v. PRL USA Holdings*, 214 F.3d 658, 664, 55 U.S.P.Q.2d 1225 (5th Cir. 2000) (“the similarity of the products or services”). The issue is not whether the services are in fact related to each other, but whether consumers associate the services and expect them to come from the same source. *See CareFirst of Md., Inc. v. First Care, P.C.*, 434 F.3d 263, 272 (4th Cir. Va. 2006); *see also Brookfield Comm’ns, Inc. v. West Coast Ent’t Corp.*, 174 F.3d 1036, 1056, 50 U.S.P.Q.2d 1545 (9th Cir. 1999) (holding that in determining whether the goods are related, a court should ask whether “the consuming public is likely somehow to associate” the defendant’s with the plaintiff’s).

Applicant’s services are different from the services sold in connection with the cited marks. Applicant’s services are aimed at and provided to injured workers covered by worker’s compensation insurance and other insurance-policy holders. *See* Attachment B. Applicant provides these consumers with a number of ancillary medical healthcare services such as durable medical equipment and supplies, home healthcare, home therapy including physical, occupational, and speech, and transportation and language translation services. *See* Attachment B, Website Printouts. In contrast, the cited marks provide primarily online and mail-order pharmacy services. *See* Attachment C, Website Printouts. Online and mail-order pharmacy services are used primarily by consumers to obtain prescription drugs, whereas Applicant’s service is limited to either worker’s compensation, auto-insurance, or other insurance covered individuals. As such, it is clear that a pharmacy, whether online or mail-order, is a different service from a service providing ancillary medical healthcare services to insured individuals. *See e.g. Carefirst*, 434 F.3d at 272 (finding dissimilar services where, “First Care only offers direct medical services to individuals. CareFirst does not; rather, it contracts with participating providers who agree to treat CareFirst members”).

**C. APPLICANT OFFERS ITS GOODS AND/OR SERVICES IN SIGNIFICANTLY
DIFFERENT TRADE CHANNELS**

Applicant operates in different trade channels from the cited marks. The cited marks are primarily used to offer online and mail order pharmacy services to general consumers. In contrast, Applicant's services include such diverse services as transportation, translation and home therapy

services, which cannot be provided through the mail. *See* Attachment B. Of course, the channels of advertising are different as well since translation services, for example, would not be advertised through the same channels as mail order prescription drugs. Further, Applicant's services are specialized to the Worker's Compensation, Automobile, and Personal Injury Insurance markets, which comprise sophisticated consumers. *See* Attachment B; *see also Medici Classics Prods. LLC v. Medici Group LLC*, 590 F. Supp. 2d 548, 557 (S.D.N.Y. 2008) (The sophistication of a consumer can be inferred based on the nature of the product or its price.) (*citing Real News Project, Inc.*, 2008 U.S. Dist. LEXIS 41457, 2008 WL 2229830 at *21).

D. THE "PRESCRIPTION SOLUTIONS" PORTION OF APPLICANT'S MARK SHOULD BE AFFORDED LESS WEIGHT BECAUSE THAT PHRASE HAS BEEN DILUTED AND MADE WEAK THROUGH PERVASIVE USE IN THE HEALTHCARE INDUSTRY.

When a junior user has a mark that incorporates the whole of another's mark, but the previous mark is weak or diluted, confusion is less likely and thus less weight should be afforded to that portion of the integrated mark. *See Claremont Polychemical Corp. v. Atlantic Powdered Metals, Inc.*, 470 F.2d 636, 637 (1972). A mark consisting of common words frequently used for products or services is usually found to be a weak mark. *See Carefirst of Maryland, Inc. v. First Care, P.C.*, 434 F.3d 263, 270, 77 U.S.P.Q.2d 1577 (4th Cir. 2006) ("The frequency of prior use of [a mark's text] in other marks, particularly in the same field of merchandise or service, illustrates the mark's lack of conceptual strength.") (*citation omitted*); *Citizens Financial Group, Inc. v. Citizens Nat'l Bank*, 383 F.3d 110, 123, 72 U.S.P.Q.2d 1389 (3d Cir. 2004) ("[A]s a general rule, widespread use of even a distinctive mark may weaken the mark."); *Time, Inc. v. Petersen Publishing Co.*, 173 F.3d 113, 118, 50 U.S.P.Q.2d 1474 (2d Cir. 1999) ("The use of part or all of the mark by third parties weakens its overall strength."); *Data Concepts, Inc. v. Digital Consulting, Inc.*, 150 F.3d 620, 625 (6th Cir. 1998).

Through pervasive use in the healthcare industry, the phrase "prescription solutions" has become diluted and is therefore weak. As previously described in Applicant's response to the December 9, 2009 Office Action, the USPTO has granted numerous registrations that include the terms "prescription" and "solutions." While the Examiner's observation that such registrations do not in fact "prove" actual use is well taken, the sheer number of such registrations at least suggest that businesses and individuals have adopted such marks for use in commerce. Of course, the Examiner's own Internet evidence of record which refers to "prescription solutions" shows actual use in commerce and that consumers are accustomed to seeing such terms. *See* Attachments to Office Action.

Moreover, the very definitions of "prescription" and "solutions" support a finding that the PRESCRIPTION SOLUTIONS mark is weak. A prescription is "a written direction for a therapeutic or corrective agent"; specif: one for the . . . use of a medicine" or "a prescribed medicine." *Miriam-Webster's Collegiate Dictionary*, 10th Ed. 1993. Indeed, in 2009, the average consumer in the U.S.

spent approximately \$979 on prescription drugs. Report on sales of Prescription drugs in U.S. in 2009, available at <http://www.imshealth.com/portal/site/imshealth/menuitem.a46c6d4df3db4b3d88f611019418c22a/?vgnextoid=d690a27e9d5b7210VgnVCM100000ed152ca2RCRD>; see also U.S. Census Bureau, Statistical Abstract of the United States: 2009, Section 1. This is evidence that the word prescription is a common word, frequently used for prescription drug products and services. Similarly, a solution is “an action of process of solving a problem.” *Mirriam-Webster’s Collegiate Dictionary*, 10th Ed. 1993. Like prescription, “solutions” is also a common element of a name for a service or corporation, albeit less routinely used than its mark counterpart. For example, the term “solutions” is a component of the title of a numerous corporations in the U.S. and Canada. See, e.g., Attachment A showing some of the publicly traded companies that include the term “solutions” as part of their corporate name. Thus, the use of the term “solutions” in conjunction with other terms is likewise common in the mind of a consumer.

Accordingly, the PRESCRIPTION SOLUTIONS mark is weak and should be given less weight in the *DuPont* analysis. Like the marks in *Claremont*, INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN and PRESCRIPTION SOLUTIONS share a common ending that is weak. See *Claremont*, 470 F.2d at 637 (holding that “[t]he designations “DURAGOLD” and “EVERGOLD” resemble one another in that they are highly suggestive of the color and wearing ability of the products upon which they are employed. They also incorporate the identical suffix ending. Despite these similarities, considering the inherent weakness in the marks, we are convinced that the manifest differences in sound and appearance are of such character as to be unlikely to cause prospective purchasers to assume that the goods originate from the same source.”). This weakness, combined with the manifest difference in sight, sound and connotation between the two marks makes it unlikely that consumers would assume that goods or services offered for sale under the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark came from the same source as those sold under the PRESCRIPTION SOLUTIONS mark.

In sum, when each aspect of INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN is given the appropriate weight in a *DuPont* analysis, the overall impression of the mark is different from the registered marks. Because PRESCRIPTION SOLUTIONS is a weak mark, the addition of the modifying word INTEGRATED is more than sufficient to prevent confusion among consumers.

II. CONCLUDING REMARKS

In view of the foregoing, it is submitted that the present application is now in condition for publication. However, if additional issues arise and direct communication with Applicant’s attorney would serve to advance prosecution of this case to finality, the Examining Attorney is cordially urged to call the undersigned attorney.

EVIDENCE

Evidence is attached in the nature of:

Attachment A – Website Printout – NYSE

Attachment B – Website Printout – Integrated Prescription Solutions “About Us” Page

Attachment C – Website Printout – Cited Marks “About Us”

EVIDENCE SECTION

EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	http://tgate/PDF/RFR/2011/01/03/20110103192224624079-77813409-003_001/evi_2424924614-191537575_._Attachment_A.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT11\IMAGEOUT11\778\134\77813409\xml1\RFR0002.JPG
	\\TICRS\EXPORT11\IMAGEOUT11\778\134\77813409\xml1\RFR0003.JPG
ORIGINAL PDF FILE	http://tgate/PDF/RFR/2011/01/03/20110103192224624079-77813409-003_002/evi_2424924614-191537575_._Attachment_B.pdf
CONVERTED PDF FILE(S) (5 pages)	\\TICRS\EXPORT11\IMAGEOUT11\778\134\77813409\xml1\RFR0004.JPG
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CONVERTED PDF FILE(S) (5 pages)	\\TICRS\EXPORT11\IMAGEOUT11\778\134\77813409\xml1\RFR0009.JPG
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DESCRIPTION OF EVIDENCE FILE	Evidence is attached in the nature of: Attachment A - Website Printout - NYSE Attachment B - Website Printout - Integrated Prescription Solutions "About Us" Page Attachment C - Website Printout - Cited Marks "About Us"
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Douglas Q. Hahn/
SIGNATORY'S NAME	Douglas Q. Hahn, Esq.
SIGNATORY'S POSITION	Atty of Record, CA Bar member
DATE SIGNED	01/03/2011
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Jan 03 19:22:24 EST 2011
TEAS STAMP	USPTO/RFR-24.249.246.14-2 0110103192224624079-77813 409-4704eb76bbbd7d147efc9 cdb1262ec4dfe-N/A-N/A-201 10103191537575443

PTO Form (Rev 4/2000)

OMB No. 0651-.... (Exp. 08/31/2004)

Request for Reconsideration after Final Action

To the Commissioner for Trademarks:

Application serial no. **77813409** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant hereby responds to the Final Office Action mailed July 2, 2010, in which the Examiner refused to register the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark (Application

Serial No. 77/813,409).

In the Office Action, the Examiner refused to register the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark on the ground that, pursuant to Section 2(d) of the Trademark Act, the applied-for mark so resembles various registered marks (*see* Final Office Action, identifying the "cited marks") such that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods and/or services of the Applicant and the registrants.

For the reasons set forth below, Applicant respectfully requests that the refusal pursuant to Sections 2(d) be withdrawn.

I. SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION

The ultimate question for determining the issue of likelihood of confusion is "whether the marks will confuse [relevant consumers] into believing that the goods [or services] they identify come from the same source." *See* Final Office Action, p. 5 (*citing In re West Point-Pepperell, Inc.*, 468 F.2d 200, 175 U.S.P.Q. 558 (C.C.P.A. 1972)). The test to determine whether there is a likelihood of confusion is set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1367 (C.C.P.A. 1973). Out of the several factors in the so-called *DuPont* test, (1) the similarity of the marks, (2) the similarity of the goods and/or services and (3) the similarity of trade channels of the goods and/or services are the most important factors to consider. *See In re Opus One, Inc.*, 60 U.S.P.Q.2d 1812 (T.T.A.B. 2001); T.M.E.P. §§ 1207.01 *et seq.* Here, the cited marks are distinguishable, the services only tangentially related and the purchasers are sophisticated. In addition, the "prescription solutions" portion of Applicant's mark in common with the cited PRESCRIPTION SOLUTIONS marks should be afforded less weight in the *DuPont* analysis because it has been diluted through pervasive use in the healthcare industry. Applicant addresses these points in greater detail below.

A. THE INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN MARK IS SIGNIFICANTLY DIFFERENT FROM THE CITED MARKS AS TO SIGHT, SOUND AND CONNOTATION.

The Examiner is correct that for determining the likelihood of confusion, "the focus is on the recollection of the purchaser who normally retains a general rather than specific impression of trademarks." *See* Final Office Action, p. 5 *citing Chemetron Corp. v. Morris Coupling & Clamp Co.*, 203 U.S.P.Q. 537 (T.T.A.B. 1979); *Sealed Air Corp. v. Scott Paper Co.*, 190 U.S.P.Q. 196 (T.T.A.B. 1975); T.M.E.P. § 1207.01(b). However, "[t]he commercial impression of a trade-mark is derived from it **as a whole**, not from its elements separated and considered in detail." *Estate of P. D. Beckwith, Inc. v. Commissioner of Patents*, 252 U.S. 538, 545-46 (U.S. 1920) (*emphasis added*); *see also AutoZone, Inc. v. Tandy Corp.*, 373 F.3d 786, 795 (6th Cir. Tenn. 2004) ("Conflicting composite marks are to be compared by looking at them as a whole, rather than breaking the marks up into their component parts for comparison The rationale for the rule is that the commercial impression of a composite trademark on an ordinary prospective buyer is created by the mark **as a whole**, not by its component parts." (*quoting* 3

J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 23:41, at 23-123 (2003) (emphasis added))). Accordingly, it is improper to focus on the terms “prescription” and “solutions” or the phrase “prescription solutions” while diminishing the other elements present in the mark, *i.e.*, the term “integrated” or the prominent design portion of the mark. *See In Re The Hearst Corporation*, 982 F.2d 493, 494 (Fed. Cir. 1992) (finding VARGA GIRL for calendars was inappropriately refused registration for calendars due to VARGA for calendars, the court stated, “by stressing the portion “varga” and diminishing the portion “girl”, the Board inappropriately changed the mark.”).

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INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN MARK ARE
DIFFERENT FROM THOSE SOLD UNDER THE CITED MARKS.**

The degree to which two services are similar is determined by looking at the degree to which the services compete with each other. *See Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1527, 224 U.S.P.Q. 185 (4th Cir. 1984) (“the similarity of the goods/services the marks identify”); *Westchester Media v. PRL USA Holdings*, 214 F.3d 658, 664, 55 U.S.P.Q.2d 1225 (5th Cir. 2000) (“the similarity of the products or services”). The issue is not whether the services are in fact related to each other, but whether consumers associate the services and expect them to come from the same source. *See CareFirst of Md., Inc. v. First Care, P.C.*, 434 F.3d 263, 272 (4th Cir. Va. 2006); *see also Brookfield Comm'ns, Inc. v. West Coast Ent't Corp.*, 174 F.3d 1036, 1056, 50 U.S.P.Q.2d 1545 (9th Cir. 1999) (holding that in determining whether the goods are related, a court should ask whether “the consuming public is likely somehow to associate” the defendant's with the plaintiff's).

Applicant's services are different from the services sold in connection with the cited marks.

Applicant's services are aimed at and provided to injured workers covered by worker's compensation insurance and other insurance-policy holders. *See* Attachment B. Applicant provides these consumers with a number of ancillary medical healthcare services such as durable medical equipment and supplies, home healthcare, home therapy including physical, occupational, and speech, and transportation and language translation services. *See* Attachment B, Website Printouts. In contrast, the cited marks provide primarily online and mail-order pharmacy services. *See* Attachment C, Website Printouts. Online and mail-order pharmacy services are used primarily by consumers to obtain prescription drugs, whereas Applicant's service is limited to either worker's compensation, auto-insurance, or other insurance covered individuals. As such, it is clear that a pharmacy, whether online or mail-order, is a different service from a service providing ancillary medical healthcare services to insured individuals. *See e.g. Carefirst*, 434 F.3d at 272 (finding dissimilar services where, "First Care only offers direct medical services to individuals. CareFirst does not; rather, it contracts with participating providers who agree to treat CareFirst members").

C. APPLICANT OFFERS ITS GOODS AND/OR SERVICES IN SIGNIFICANTLY DIFFERENT TRADE CHANNELS

Applicant operates in different trade channels from the cited marks. The cited marks are primarily used to offer online and mail order pharmacy services to general consumers. In contrast, Applicant's services include such diverse services as transportation, translation and home therapy services, which cannot be provided through the mail. *See* Attachment B. Of course, the channels of advertising are different as well since translation services, for example, would not be advertised through the same channels as mail order prescription drugs. Further, Applicant's services are specialized to the Worker's Compensation, Automobile, and Personal Injury Insurance markets, which comprise sophisticated consumers. *See* Attachment B; *see also Medici Classics Prods. LLC v. Medici Group LLC*, 590 F. Supp. 2d 548, 557 (S.D.N.Y. 2008) (The sophistication of a consumer can be inferred based on the nature of the product or its price.) (*citing Real News Project, Inc.*, 2008 U.S. Dist. LEXIS 41457, 2008 WL 2229830 at *21).

D. THE "PRESCRIPTION SOLUTIONS" PORTION OF APPLICANT'S MARK SHOULD BE AFFORDED LESS WEIGHT BECAUSE THAT PHRASE HAS BEEN DILUTED AND MADE WEAK THROUGH PERVASIVE USE IN THE HEALTHCARE INDUSTRY.

When a junior user has a mark that incorporates the whole of another's mark, but the previous mark is weak or diluted, confusion is less likely and thus less weight should be afforded to that portion of the integrated mark. *See Claremont Polychemical Corp. v. Atlantic Powdered Metals, Inc.*, 470 F.2d 636, 637 (1972). A mark consisting of common words frequently used for products or services is usually found to be a weak mark. *See Carefirst of Maryland, Inc. v. First Care, P.C.*, 434 F.3d 263, 270, 77 U.S.P.Q.2d 1577 (4th Cir. 2006) ("The frequency of prior use of [a mark's text] in other marks, particularly in the same field of merchandise or service, illustrates the mark's lack of conceptual

strength.”) (*citation omitted*); *Citizens Financial Group, Inc. v. Citizens Nat’l Bank*, 383 F.3d 110, 123, 72 U.S.P.Q.2d 1389 (3d Cir. 2004) (“[A]s a general rule, widespread use of even a distinctive mark may weaken the mark.”); *Time, Inc. v. Petersen Publishing Co.*, 173 F.3d 113, 118, 50 U.S.P.Q.2d 1474 (2d Cir. 1999) (“The use of part or all of the mark by third parties weakens its overall strength.”); *Data Concepts, Inc. v. Digital Consulting, Inc.*, 150 F.3d 620, 625 (6th Cir. 1988).

Through pervasive use in the healthcare industry, the phrase “prescription solutions” has become diluted and is therefore weak. As previously described in Applicant’s response to the December 9, 2009 Office Action, the USPTO has granted numerous registrations that include the terms “prescription” and “solutions.” While the Examiner’s observation that such registrations do not in fact “prove” actual use is well taken, the sheer number of such registrations at least suggest that businesses and individuals have adopted such marks for use in commerce. Of course, the Examiner’s own Internet evidence of record which refers to “prescription solutions” shows actual use in commerce and that consumers are accustomed to seeing such terms. See Attachments to Office Action.

Moreover, the very definitions of “prescription” and “solutions” support a finding that the PRESCRIPTION SOLUTIONS mark is weak. A prescription is “a written direction for a therapeutic or corrective agent”; specif: one for the . . . use of a medicine” or “a prescribed medicine.” *Mirriam-Webster’s Collegiate Dictionary*, 10th Ed. 1993. Indeed, in 2009, the average consumer in the U.S. spent approximately \$979 on prescription drugs. Report on sales of Prescription drugs in U.S. in 2009, available at <http://www.imshealth.com/portal/site/imshealth/menuitem.a46c6d4df3db4b3d88f611019418c22a/?vgnextoid=d690a27e9d5b7210VgnVCM100000ed152ca2RCRD>; see also U.S. Census Bureau, Statistical Abstract of the United States: 2009, Section 1. This is evidence that the word prescription is a common word, frequently used for prescription drug products and services. Similarly, a solution is “an action of process of solving a problem.” *Mirriam-Webster’s Collegiate Dictionary*, 10th Ed. 1993. Like prescription, “solutions” is also a common element of a name for a service or corporation, albeit less routinely used than its mark counterpart. For example, the term “solutions” is a component of the title of a numerous corporations in the U.S. and Canada. See, e.g., Attachment A showing some of the publicly traded companies that include the term “solutions” as part of their corporate name. Thus, the use of the term “solutions” in conjunction with other terms is likewise common in the mind of a consumer.

Accordingly, the PRESCRIPTION SOLUTIONS mark is weak and should be given less weight in the *DuPont* analysis. Like the marks in *Claremont*, INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN and PRESCRIPTION SOLUTIONS share a common ending that is weak. See *Claremont*, 470 F.2d at 637 (holding that “[t]he designations “DURAGOLD” and “EVERGOLD” resemble one another in that they are highly suggestive of the color and wearing ability of the products upon which they are employed. They also incorporate the identical suffix ending. Despite these similarities, considering the inherent weakness in the marks, we are convinced that the manifest differences in sound and appearance are of such character as to be unlikely to cause prospective purchasers to assume that the goods originate

from the same source.”). This weakness, combined with the manifest difference in sight, sound and connotation between the two marks makes it unlikely that consumers would assume that goods or services offered for sale under the INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN mark came from the same source as those sold under the PRESCRIPTION SOLUTIONS mark.

In sum, when each aspect of INTEGRATED PRESCRIPTION SOLUTIONS & DESIGN is given the appropriate weight in a *DuPont* analysis, the overall impression of the mark is different from the registered marks. Because PRESCRIPTION SOLUTIONS is a weak mark, the addition of the modifying word INTEGRATED is more than sufficient to prevent confusion among consumers.

II. CONCLUDING REMARKS

In view of the foregoing, it is submitted that the present application is now in condition for publication. However, if additional issues arise and direct communication with Applicant's attorney would serve to advance prosecution of this case to finality, the Examining Attorney is cordially urged to call the undersigned attorney.

EVIDENCE

Evidence is attached in the nature of:

Attachment A – Website Printout – NYSE

Attachment B – Website Printout – Integrated Prescription Solutions “About Us” Page

Attachment C – Website Printout – Cited Marks “About Us”

EVIDENCE

Evidence in the nature of Evidence is attached in the nature of: Attachment A - Website Printout - NYSE Attachment B - Website Printout - Integrated Prescription Solutions "About Us" Page Attachment C - Website Printout - Cited Marks "About Us" has been attached.

Original PDF file:

http://tgate/PDF/RFR/2011/01/03/20110103192224624079-77813409-003_001/evi_2424924614-191537575_._Attachment_A.pdf

Converted PDF file(s) (2 pages)

Evidence-1

Evidence-2

Original PDF file:

http://tgate/PDF/RFR/2011/01/03/20110103192224624079-77813409-003_002/evi_2424924614-191537575_._Attachment_B.pdf

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Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

Original PDF file:

http://tgate/PDF/RFR/2011/01/03/20110103192224624079-77813409-003_003/evi_2424924614-

191537575_ Attachment_C.pdf

Converted PDF file(s) (5 pages)

Evidence-1

Evidence-2

Evidence-3

Evidence-4

Evidence-5

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Douglas Q. Hahn/ Date: 01/03/2011

Signatory's Name: Douglas Q. Hahn, Esq.

Signatory's Position: Atty of Record, CA Bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 77813409

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TEAS Stamp: USPTO/RFR-24.249.246.14-2011010319222462

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Bluephoenix Solutions, Ltd.	BPHX
Broadridge Financial Solutions	BR
Catalyst Health Solutions, Inc	CHSI
Cognizant Technology Solutions Corporation	CTSH
Emergent Biosolutions	EBS
Energysolutions	ES
Express-1 Expedited Solutions Inc.	XPO
Flexible Solutions International Inc.	FSI
Fuel Systems Solutions, Inc.	FSYS
Helix Energy Solutions Group	HLX
Innovative Solutions And Support, Inc.	ISSC
Integrated Silicon Solution, Inc.	ISSI
Kingtone Wirelesinfo Solution Holding Ltd	KONE
Kratos Defense & Security Solutions, Inc.	KTOS
L-1 Identity Solutions	ID
Medco Health Solutions Inc.	MHS
Medidata Solutions, Inc.	MDSO
Mer Telemanagement Solutions Ltd.	MTSL
Moduslink Global Solutions, Inc	MLNK
Motorola Solutions, Inc.	MSIW
Omnova Solutions Inc.	OMN
PDF Solutions, Inc.	PDFS
Skyworks Solutions, Inc.	SWKS
Sonic Solutions	SNIC

Streamline Health Solutions, Inc.	STRM
Sxc Health Solutions Corp.	SXCI
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Witkop Law Group Hires Brent Jensen as Associate in San Jose

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IPS has a comprehensive suite of PBM services structured to provide the highest quality prescription health services at cost containment prices while streamlining and simplifying the claims management process for adjusters. IPS also provides ancillary healthcare services to injured workers and policyholders in need of durable medical equipment and supplies, home healthcare, home therapy including physical, occupational, and speech, and transportation and language services through a single touch point. [More Info](#)


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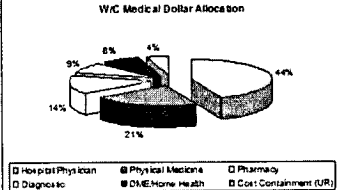
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Overview of the Workers' Compensation Market

Workers' compensation is a form of insurance that provides compensation medical care for employees who are injured in the course of employment, in exchange for mandatory relinquishment of the employee's right to sue his or her employer for the tort of negligence.

Over the past decade, workers' compensation medical costs have steadily increased and now represent over half of total insurance carrier losses. Although claims volume has decreased, severity has increased, resulting in the need to balance quality of care for injured workers with cost containment benefits to stakeholders. The chart and accompanying figures below show total medical spending for workers' compensation claims by category in 2008.

W/C Medical Dollar Allocation



Category	Percentage
Hospital/Physician	44%
Physical Medicine	21%
Pharmacy	14%
Diagnostic	9%
DME/Home Health	8%
Cost Containment (UR)	6%

Hospitals & Physicians: \$18.4 billion
 Physical Medicine: \$3.8 billion
 Pharmacy: \$5.0 billion
 Diagnostic Services: \$3.2 billion
 DME/Home Healthcare: \$3.2 billion
 Cost Containment (UR): \$1.8 billion

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Integrated Prescriptions Solutions is a single source cost containment solution for prescription drugs and ancillary healthcare products for the Work Comp and Auto PIP markets. Our suite of comprehensive services is designed to meet the needs of our clients and their injured workers or policyholders. IPS provides these services through the largest pharmacy network in the industry and National provider partnerships with world class Home Health organizations. IPS is truly a single source provider that you can count on to deliver the highest quality of products and services at cost containment prices.

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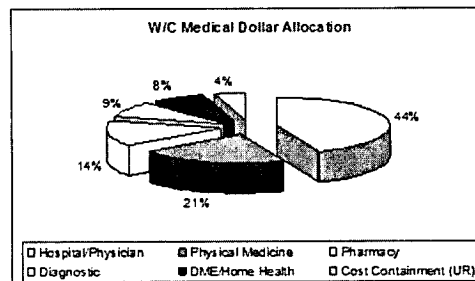
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 Physical Medicine: \$8.8 billion
 Pharmacy: \$6.0 billion
 Diagnostic Services: \$3.2 billion
 DME/Home Healthcare: \$3.2 billion
 Cost Containment (UR): \$1.8 billion

Integrated Prescription Solutions, Inc. provides innovative solutions that reduce the cost of prescription drugs and ancillary healthcare products and services to our clients through a seamless, fully integrated workers' compensation medical management system.

Overview of the Auto Market

Personal Injury Protection ("PIP") is also known as "Medical Payment Insurance" or "Med Pay." PIP compensates policy holders for accidental bodily injury by providing payment for related medical and hospital expenses, pharmacy and ancillary healthcare products, child care expenses, loss of services and funeral expenses.

We believe Integrated Prescription Solutions, Inc. is leading the way in bringing successful PBM services to the PIP automobile insurance marketplace. The Company currently does business with Mercury Insurance, One Beacon Auto, Nationwide Auto, and GMAC Auto. We believe that the Company's unique abilities to reverse third-party bills and to improve overall prescription capture rates above 90 percent provide the Company with significant advantages in this market space, since virtually all bills are third-party bills.

The PIP automobile insurance market is not viable in every state, since some states mandate policy limits as low as \$2,000. However, Michigan, Florida, and other states permit generous policy limits that cover pharmacy-related costs. Therefore, we expect the Company's cost containment PBM services and third-party bill management solutions to drive real bottom-line savings for the Company's clients in this market. In summary:

We capture third-party bills and direct pharmacy bills in the discount program over 90 percent of the time.

We eliminate out-of-pocket expenses for policyholders, resulting in higher program utilization and optimized outcomes.

We provide an easy-to-use pharmacy program for adjusters, eliminating multiple touch-points and improving access to clinical specialists.

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To learn more about Prescription Solutions, our award-winning mail order pharmacy, and how we bring you the medications you need, at your convenience, please explore the links at right.

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ABOUT PRESCRIPTION SOLUTIONS

Prescriptions Solutions is much more than just a mail order pharmacy. Since 1993, we have been a focused, collaborative, and innovative leader in the pharmacy benefits management (PBM) industry. We manage prescription drug benefits of commercial, Medicare, and government health plans and those of employers and unions.

A UnitedHealth Group company, Prescription Solutions serves more than 10 million people nationwide through a network of 64,000 community pharmacies and state-of-the-art mail service mail order pharmacies in Carlsbad, California, and Overland Park, Kansas.

Both of our mail order pharmacy locations have earned the prestigious Verified Internet Pharmacy Practice Sites™ (VIPPS®) accreditation by the National Association of Boards of Pharmacy® (NABP®). In the 2008 WilsonRx® Pharmacy Satisfaction Survey, Prescription Solutions was named #1 National PBM in Overall Member Satisfaction and #1 National Mail Order Pharmacy two years running.

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ABOUT PRESCRIPTIONSOLUTIONS.COM

PrescriptionSolutions.com is the online home of Prescription Solutions®. Here is where you can order prescription refills, medical supplies, and over-the-counter items, right from the convenience of your computer – any time, day or night.

Our website also connects you to helpful information and education materials about prescription medicines and health-related topics. In addition, we can help you order refills, check on an order, check order history, download commonly used forms, check medication pricing, and much more.

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